

JOHN ELDON DEAN

IBLA 77-433

Decided October 18, 1977

Appeal from a determination of the New Mexico State Office, Bureau of Land Management, rejecting appellant's offer for oil and gas lease M 36472 (Montana).

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

Where a check has been submitted with a drawing entry card in payment of the \$ 10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

APPEARANCES: John Eldon Dean, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from the April 4, 1977, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer M 36472 because the \$ 30 check submitted for payment of the filing fees for the offer, was returned as uncollectible.

Appellant's name was drawn first in the February 1977 Simultaneous Drawing for parcel number MT 514. The first year's rental and signed stipulations were received on March 21, 1977. On April 4, 1977, the BLM informed appellant of the rejection of his offer because his check for filing fees was returned as uncollectible.

In his Statement of Reasons appellant asserts he deposited with the Harvard Trust Co. of Cambridge, Massachusetts, in his checking account in mid-November a check for an amount just under \$ 1,000. He claims the bank on which the check was drawn erroneously failed to honor the check. Appellant also asserts error on the part of Harvard Trust Co. for failing to communicate to him, the drawer of the check, or charge his account for the returned item. Harvard Trust Co. also placed a hold on his account without informing him. Appellant claims he first learned that his deposit was not honored when, near the end of March, his account was debited for \$600 which partially covered the amount of the dishonored check. Because of these problems Harvard Trust Co. dishonored appellant's \$30 check to the BLM. Immediately upon receiving notice he sent a bank draft for this amount to the BLM.

A drawing entry card for a simultaneous oil and gas lease offer must be accompanied by a remittance covering the filing fee of \$10. 43 CFR 3112.2-1(a)(1). When appellant's check was dishonored his entry card was not accompanied by a remittance to cover the filing fee. Thus, his later submission of a bank draft could not cure the defect. The Board has consistently held a check which a bank has refused to honor is not a tender or payment of the required fee unless the refusal to honor was the result of a bank error. Pauline V. Trigg, 31 IBLA 296 (1977); Wikoa, Inc., 22 IBLA 6 (1975); Duncan Miller, 16 IBLA 379 (1974). A mere allegation that a bank has erroneously refused to honor a check, uncorroborated by an admission of mistake by the bank, is not sufficient to show that the bank has made an error, and the dishonored check cannot be considered to be a proper remittance accompanying the entry card.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, subject however, to appellant's right to file with the State Office within 30 days from the date of this decision an acknowledgement by the bank of its error. If a statement is filed, the State Office will afford it due consideration.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

